

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
APR 26 2001

OFFICE OF  
MANAGING DIRECTOR

86-285

Mr. Eaton P. Govan  
P.O. Box 5188  
Johnson City, TN 37602

RE: Request for Waiver (Section 9, Regulatory Fee), WEZG (FM), Jefferson City,  
Tennessee, Fee Control Number 9805228835108002.

Dear Mr. Govan:

We reviewed your combined request dated April 2, 1999, that the Commission waive the regulatory fees for radio station WEZG (FM) for fiscal years (FY) 1994, 1995, and 1998, and that the Commission waive the penalty imposed on the late payment of the regulatory fees for fiscal years 1996 and 1997. For the reasons stated below, we deny all aspects of your request for waiver of the required regulatory fees and all other stated forms of relief. Furthermore, this letter notifies you that you owe the United States \$3,248.75.

We wrote two letters on January 27, 1999 requesting that you pay the regulatory fees for FY 1994 and FY 1995. We also wrote on February 4, 1999 telling you that your late payment of the regulatory fee for FY 1996 was insufficient, and that you owed an additional amount for the fee and the penalty. You did not make a timely response, but instead waited until April 2, 1999 to request a waiver of those fees and the fees for FY 1997 and FY 1998. We are dismissing your request because you did not pay the fees or the penalties, and because you failed to provide the proper base for establishing financial hardship or other relief. Our reasoning is provided below.

We are dismissing the portion of your request to waive the regulatory fees for FY 1994, FY 1995, and FY 1998, because you did not pay the fees or complete the required forms, and your request was too late to be construed as a request for a deferment of payment. The Commission's rule, 47 CFR §1.1166(c), states that "[w]aiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of financial hardship." Moreover, you raised an additional reason for dismissal when you failed on April 2, 1999 to submit the fees and the penalties for FY 1994, FY 1995, and the additional amount we asked you to pay for FY 1996. 47 U.S.C. §159(c)(2).

We are dismissing the remaining portion of your request for waiver of the regulatory fees for FY 1997 because you did not provide evidence of financial hardship for that year.

We are denying your request that the Commission waive the late penalties because the penalties are required by statute. Congress mandated that we impose penalties on late paid fees. 47 U.S.C. §159(c). The Commission's implementing rule provides: "Any late payment or

insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner.” 47 CFR §1.1164. You did not furnish any reason why your payment was late; therefore, we are denying that portion of the request. We note that the amounts paid, \$600 toward the FY 1997 regulatory fee and the \$150 for the penalty, were insufficient. Your regulatory fee for FY 1997 was \$1,000, and the penalty was \$250. Accordingly, you owe an additional \$500 for FY 1997.

Even if your request had been timely and the fees paid or deferral requested, we could not grant relief because your documentation does not establish a compelling case of financial hardship. In reviewing a showing of financial hardship, the Commission relies upon a licensee’s cash flow, as opposed to the entity’s profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus even if a station loses money, any funds paid to principals, or deductions taken for depreciation or similar items are considered funds available to pay fees. Moreover, you did not demonstrate that paying the regulatory fee would affect the ability of the station to maintain service to the public. Finally, you did not demonstrate how waiver of the fees in this case overrides the public’s interest to collect the fees.

The total of fees and penalties for the years FY 1994 through FY 1998, including the partial fees and penalties for FY 1996 and FY 1997, is \$3,248.75. This amount is due immediately. The following chart may help you to understand the computation.

<i>Year</i>	<i>Fee Amount</i>	<i>Payment/amt</i>	<i>Penalty owed</i>	<i>Date of waiver request</i>	<i>Amt due (fee+ penalty)</i>
1994	600	Not paid	150.00	4/2/99	750
1995	745	Not paid	187.25	4/2/99	931.25
1996	830	Partial 600+150	57.50	4/2/99	287.50
1997	1000	Partial 600+150	100.00	4/2/99	500
1998	600	Not paid	150.00	4/2/99	750
<b>Total due</b>					<b>\$3,248.75</b>

**Interest starts to accrue on this debt from the date of this letter, and if the debt remains unpaid for more than 90 days, we are required to add a penalty of 6 percent per year of the unpaid amount. 31 U.S.C. §3717. If we have to initiate collection effort to obtain the amount owed, we will charge you the accompanying administrative costs. You may avoid this additional interest, the additional penalties, and other administrative charges, if you pay the full amount within 30 days of the date of this letter.**

**If this debt is not paid, we may transfer this debt to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or apply other administrative sanctions. 47 CFR §§1.1161; 1.1164; 1.1940. Any payment received more than 30 days after the date of this letter will be subject to interest, and you may incur additional penalties and administrative costs. Your payment of \$3,248.75 is due now.**

If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivable Operation Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Reger', with a large, stylized initial 'M'.

 Mark Reger  
Chief Financial Officer



FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF GENERAL COUNSEL

## *memorandum*

TO: Tom Putnam, OMD  
Mark Reger, CFO

FROM: Paul K. Cascio, OGC

SUBJECT: Request for Waiver of 1994, 1995, and 1998 Regulatory Fees (Section 9) and Penalties for FY 1996 and FY 1997 Regulatory Fees - - WEZG-FM, Jefferson City, TN

DATE: April 24, 2001

Mr. Eaton P. Govan, one of the two named license holders<sup>1</sup> for WEZG-FM, Jefferson City, TN, wrote on April 2, 1999, requesting that the Commission waive the applicable regulatory fees that the station should have paid since 1994, and that it grant other relief. Specifically, he sought a waiver for each unpaid fee for fiscal years (FY) 1994, 1995, and 1998. He also requested a waiver and refund of the regulatory fees he partially paid in May 1998, for FY 1996 and FY 1997. Finally, he sought waivers and refunds of the penalties applied to the late payment of the fees due for FY 1996 and FY 1997. For purposes of discussion, we set out the amounts paid and the amount due in the chart below. He did not specifically request relief from the penalties that will be imposed because the annual regulatory payments will be late. He based the entire request loosely on a claim of economic hardship supported only by general information appended to his request. The general information included four documents captioned, "Statement of Cash Revenues & Expenses" each of which was further designated with a year, *e.g.*, 1994, 1995, 1996, and 1998. He also included three letters from the Commission that demanded payment of regulatory fees and penalties for FY 1994 and FY 1995, and the balance of the required regulatory fee and penalty for FY 1996.<sup>2</sup>

Although Mr. Govan appears *pro se*, this status does not excuse his failure to submit the required FCC Forms 159 or obligate the Commission to speculate about other permutations of available relief. For example, given the date the fees were due and the date of the request, we cannot

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<sup>1</sup> Berton B. Cagle, Jr., is also named as a licensee.

<sup>2</sup> The demand letter dated January 27, 1999 (pertaining to FY 1994 and FY 1995) required Mr. Govan to make payment within 30 days. The letter dated February 4, 1999 required Mr. Govan to pay the balance of the fee and the penalty, or to provide supporting documentation within 20 days of the letter.

construe his letter as a request that the Commission defer payment of any of the fees. Similarly, we do not construe his letter as a request that the Commission grant extraordinary consideration to him, and thereby broadly waive the rules implementing the regulatory fee statute.

Mr. Govan claims that the station is operating as a simulcast of a regional station, and that the station experienced severe financial hardship for several years. Despite the claim of past financial hardship, we have no evidence that anyone on behalf of the license holders requested a waiver of the regulatory fees before sending the letter dated April 2, 1999.

### *The fees and status of payment*

The payment history and various claims are confusing, thus a chart is helpful to the explanation of the amounts owed, payments and timing, and debt up to FY 1998. We assume from Mr. Govan's letter and the FCC's Payment Transactions Detail Report that he paid a total of \$1,550 on May 21, 1998 in an attempt to resolve the arrearage and the penalty for FY 1996 and FY 1997. The amount tendered, however, was insufficient to pay the regulatory fees and the penalties; therefore, the Commission applied the funds partially against the fees and penalties for each of the two years.

<u>Year</u>	<u>Fee amt</u>	<u>Payment</u>	<u>Penalty</u>	<u>Waiver requested</u>	<u>Amt due</u>
1994	\$ 600	no	\$ 150	4/2/99	\$ 750
1995	745	no	186.25	4/2/99	931.25
1996	830	part (600+150) <sup>3</sup>	57.50	4/2/99	287.50
1997	1000 <sup>4</sup>	part (600+150)	100	4/2/99	500
1998	600	no	150	4/2/99	750
Total due					\$3,248.75

### *The standards—procedures, timeliness, proof, and penalties.*

#### Procedures and timeliness.

Because Mr. Govan waited until April 2, 1999 to assert a broad waiver addressing the years from 1994 to 1998, we first consider whether our procedures permit his submission.

As a means to enforce payment of the fees, Congress gave the Commission three tools, one of which is the authority to “dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under [section 9 of the Communications Act of 1934].” 47 U.S.C. §159(c)(2). The Commission's rule provides that “[w]aiver requests that do not include the

<sup>3</sup> The payment transactions detail report shows that Mr. Govan paid a total of \$1,550 on May 21, 1998, of which two payments of \$600 and two penalties of \$150 were credited to his account. The additional payment entries (MUB7) of \$25 are for the broadcast auxiliary station.

<sup>4</sup> Report & Order, *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, FCC 97-215, rel. Jun 26, 1997, Attachment K. Because the payment was late, the total due was \$1,250 (\$1,000 + \$250). The partial payment (\$600 plus \$150 toward the penalty) left balance of \$400 for the fee and \$100 for the penalty.

required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of financial hardship.” 47 CFR §1.1166(c).<sup>5</sup> Only after determining that the fees or forms were submitted, or a petition was timely, does the Commission consider a request, and then “on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.” 47 CFR §1.1166.

#### Required proof

After determining the request is procedurally correct, we consider a waiver based on financial hardship in the light of the following standard:

Mere allegations or documentation of financial loss, standing alone, will not support a waiver request. Rather, we will grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public. It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public. In order to establish a basis for waiver predicated on financial need, regulatees who do not initially submit an adequate showing of financial hardship, may be asked to provide information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

Opinion and Order *In The Matter Of Implementation Of Section 9 Of The Communications Act*, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd. 12759, 12761, ¶ 13.

#### Penalties for late payment

Next, we consider the reason for the penalty, and whether we may grant relief. Congress mandated a penalty of “25 percent of the amount of the fee which was not paid in a timely manner,” and it empowered the Commission to dismiss “any application or other filing for failure to pay in a timely manner any fee or penalty under [section 9 of the Communications Act of 1934].” 47 U.S.C. § 159(c). Assuming for argument that the request for relief from the penalty is not dismissed on a procedural ground, the Commission’s rule provide only the narrow excuse-- bank error, *i.e.*: “Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner.” 47 CFR §1.1164. We applied each of these standards to Mr. Govan’s request and determined he is not entitled to relief.

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<sup>5</sup> This was codified from the Commission’s discussion of the matter at Report and Order, *In re Implementation of Section 9 of the Communications Act: Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, rel. Jun 8, 1994, 9 FCC Rcd 5333, ¶¶ 33-34.

*Mr. Govan's Request to Waive the Fees.*

Procedure and timeliness.

We believe Mr. Govan's request has fatal procedural defects. Because Mr. Govan consolidated the target years, we separately evaluated the requested relief for each year. First, the request (submitted in 1999) was late and Mr. Govan did not include either the requisite fee or the remittance advice for any year from 1994 through 1998. Thus, under 47 CFR §1.1166(c), the Commission should dismiss each request for waiver that did not include the required fee or form. Moreover, two additional bases for dismissal exist under 47 U.S.C. §159(c) because he did not pay the fees or the penalties for the years except to partially pay amounts for FY 1996 and FY 1997. In this situation, the Commission may dismiss Mr. Govan's request on the ground that he did not pay the fees for FY 1994, FY 1995, and the underpayment for FY 1996. The Commission may dismiss the request for relief from the regulatory fee for FY 1998 because it was not filed during the fee payment period, and the fee remains unpaid. Dismissal under section 159; however, does not resolve the entire matter, because Mr. Govan paid a portion of the regulatory fee and late penalty due for FY 1996 and 1997.<sup>6</sup> On that fact, the Commission should examine the payment record to determine if Mr. Govan's effort sustains the request. Unfortunately for Mr. Govan, he did not make a response to the request for payment dated February 4, 1999 on time;<sup>7</sup> therefore, the Commission should dismiss the request for relief for fees and penalties due for FY 1996. Accordingly, the only portion of the request properly before us is to waive the fee for FY 1997.

The evidence of financial hardship.

We assume from their labels that Mr. Govan's documents correspond to FY 1994, FY 1995, FY 1996, and FY 1998. We note from the absence; however, that Mr. Govan failed to submit a document for FY 1997. We cannot assume the content of that missing document or presume that 1997 was another year of alleged financial loss. Even so, we reviewed the other materials to determine if they addressed FY 1997. Overall, we find that the information submitted to show his net loss for each of four years<sup>8</sup> raises questions as to the nature of the hardship, and it does not address 1997.<sup>9</sup> Moreover, the documents do not show that the station lacks funds to both pay regulatory fees and maintain its service to the public.

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<sup>6</sup> The Commission's transaction detail report reflects that Mr. Govan paid \$1,550. The dates and reasons for payment and the actual amount due are not clearly defined; however, it appears partial credit for the fee and the penalty were given for FY 1996 and 1997. Based on three letters in the record (debts for FY 94, 95, and 96) the amount then due, plus penalties was \$1,968.75. The letters dated Jan 27, 1999 informed Mr. Govan he owed \$750 for FY 94 and \$931.25 for FY 95. A letter dated February 4, 1999, advised Mr. Govan that he owed an additional \$287.50 for FY 96. This total is \$1,968.75. Thus, it appears that Mr. Govan is not current in his debt payment.

<sup>7</sup> The Commission's letter of February 4, 1999 provided Mr. Govan two alternatives: within 20 days either pay the difference owed, \$287.50, or provide documentation proving payment was not due. Mr. Govan missed the stated deadline.

<sup>8</sup> The reported "loss" for the years 1994, 1995, 1996, and 1998 was \$28,749; \$26,80 (sic); \$31,450; and \$12,280, respectively.

<sup>9</sup> For example, expenses for 1994, 1995, and 1996 are relatively constant, as are the categories and the costs attributable for programming, technical, wages and payroll taxes, and tower rental. After the simulcast effort (arguably to save money) wages were reduced 48%, no payroll taxes were withheld, and programming costs were eliminated. However costs increased by 167%, accounting was a first time cost of \$800, technical costs increased

The remaining matter is to evaluate the request to waive the FY 1997 regulatory fees. Mr. Govan did not submit anything addressing FY 1997, and we are unable to extrapolate evidence of financial hardship from the other four documents. We recommend that the Commission deny that request on the ground that it lacks supporting information. Even if the request for relief from the fee for FY 1996 (or other years) was procedurally proper, the evidence fails to meet the Commission's standard.

In summary, Mr. Govan failed to pay anything for FY 1994, FY 1995, and FY 1998; therefore, the Commission should dismiss that portion of the request. The Commission should also dismiss the request concerning FY 1996 because Mr. Govan failed to respond to the Commission's demand letter. Finally, the Commission should deny the request for relief for FY 1997 because Mr. Govan did not submit any supporting documentation. An audit of the account is appropriate to finalize the bill; however, it has no bearing on the various requests.

#### *Mr. Govan's Request to Waive Late Penalties*

Mr. Govan did not specifically request a waiver of the penalties that must be imposed because he failed to timely pay the fees for the FY 1994, FY 1995, and FY 1998. He does request some relief from the late payment penalties for the FY 1996 and FY 1997 regulatory fees, which he paid on May 21, 1998. Even so, his request does not prevail over the statutory requirement: "Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner." 47 CFR §1.1164. Mr. Govan does not allege that late receipt was the result of bank error; accordingly, there is no excuse for the delay or a basis for relief from the penalty imposed when the fees were not paid late or they were late.

Even an expansive interpretation of the Commission's statutory authority to waive a fee "in any specific instance for good cause shown, where such action would promote the public interest"<sup>10</sup> does not provide grounds for relief. Our authority to waive fees is narrowly defined, and rests upon an established standard with two elements: whether an extraordinary or compelling reason has been demonstrated; and would the waiver of the fee override the public interest to collect the fee. *See Conference Report, H.R. Rep. No. 453, 99<sup>th</sup> Cong., 1<sup>st</sup> Sess. 423.* Mr. Govan offered no explanation for the delay except to state the station was suffering financial hardship. He is also responsible for the penalties for the late payments for FY 1994, FY 1995, and FY 1998.

#### *Conclusion*

The Commission should not entertain a request to waive regulatory fees where the fee has not been paid and the request for waiver is not timely. Moreover, the Commission should not entertain a request for relief from a regulatee who has failed to respond properly to a demand for payment. Finally, the Commission should not grant relief from the regulatory fee on the mere

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65%, and wages decreased by 48%. Moreover, during the years before 1998, the interest payment was reduced by 7.5% and 23% respectively, but it remained constant in 1996 and 1998.

<sup>10</sup> 47 USC 159(d); 47 CFR §1.1166.



unsubstantiated assertion of financial hardship. Computed from the materials presented in this request, Mr. Govan owes \$3,248.75 in fees and penalties for the years from FY 1994 through FY 1998. The debt is immediately due and payable,<sup>11</sup> and the Commission should initiate collection procedures. The attached correspondence informs Mr. Govan that the Commission denied the entire request. It also provides the notice required under 31 U.S.C. §3717, *e.g.*, that the debt is immediately due and subject to interest, additional penalties, and administrative costs unless paid within 30 days of the date the notice is mailed. This notice specifically is not intended to and does not provide the notice required by 31 U.S.C. § 3711(e)(2) before reporting the information to a consumer reporting agency.<sup>12</sup>

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<sup>11</sup> 31 U.S.C. §3701.

<sup>12</sup> Before disclosing information from a system of records that a person is responsible for a debt, we must have completed six required steps.